

The Honorable James L. Robart

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANTZ SAMSON, a Washington resident,
individually and on behalf of all others similarly
situated,

Plaintiff,

V.

UNITEDHEALTHCARE SERVICES, INC.,

Defendant.

Case No. 2:19-cv-00175-JLR

**DEFENDANT UNITED HEALTHCARE
SERVICES, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant United HealthCare Services, Inc. (“United”) responds to plaintiff’s complaint with the following answer and affirmative defenses:

I. NATURE OF THE ACTION

1.

In response to the allegations in paragraph 1.1 of the complaint, after reasonable investigation, United is without sufficient information to respond to the allegations in this paragraph, and therefore denies same.

2.

In response to the allegations in paragraph 1.2 of the complaint, after reasonable investigation, United is without sufficient information to respond to the allegations in this paragraph, and therefore denies same.

3.

In response to the allegations in paragraph 1.3 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

II. JURISDICTION AND VENUE

4.

In response to the allegations in paragraph 2.1 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required.

5.

In response to the allegations in paragraph 2.2 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

6.

In response to the allegations in paragraph 2.3 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

III. PARTIES

7.

In response to the allegations in paragraph 3.1 of the complaint, after reasonable investigation, United is without sufficient information to admit or deny the remaining allegations in this paragraph, and therefore denies same.

8.

In response to the allegations in paragraph 3.2 of the complaint, United admits that its principal place of business is in Minnetonka, Minnesota but denies that it is a Delaware corporation.

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1 **IV. THE WASHINGTON AUTOMATIC DIALING AND ANNOUNCING**
2 **DEVICE STATUTE, RCW 80.36.400**

3 9.

4 In response to the allegations in paragraph 4.1 of the complaint, United states that the
5 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
6 response is required, United denies the allegations in this paragraph.

7 10.

8 In response to the allegations in paragraph 4.2 of the complaint, United states that the
9 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
10 response is required, United denies the allegations in this paragraph.

11 11.

12 In response to the allegations in paragraph 4.3 of the complaint, United states that the
13 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
14 response is required, United denies the allegations in this paragraph.

15 **V. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991,**
16 **47 U.S.C. § 227**

17 12.

18 In response to the allegations in paragraph 5.1 of the complaint, United states that the
19 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
20 response is required, United denies the allegations in this paragraph.

21 13.

22 In response to the allegations in paragraph 5.2 of the complaint, United states that the
23 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
24 response is required, United denies the allegations in this paragraph.

25 14.

26 In response to the allegations in paragraph 5.3 of the complaint, United states that the

1 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
2 response is required, United denies the allegations in this paragraph.

3 15.

4 In response to the allegations in paragraph 5.4 of the complaint, United states that the
5 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
6 response is required, United denies the allegations in this paragraph.

7 **VI. FACTUAL ALLEGATIONS**

8 16.

9 In response to the allegations in paragraph 6.1 of the complaint, after reasonable investigation
10 United is without sufficient information to admit or deny the allegations in this paragraph, and
11 therefore denies same.

12 17.

13 In response to the allegations in paragraph 6.2 of the complaint, United denies the allegations
14 of this paragraph as stated.

15 18.

16 In response to the allegations in paragraph 6.3 of the complaint, United admits that the
17 specified number received a call after March 2018. The call was made to contact a current United
18 member who had provided United that number to contact them. United denies any remaining
19 allegations in this paragraph.

20 19.

21 In response to the allegations in paragraph 6.4 of the complaint, United states that the content
22 of the message speaks for itself, and denies Plaintiff's characterization of same. United denies any
23 remaining factual allegations in this paragraph.

24 20.

25 United denies the allegations in paragraph 6.5 of the complaint.

26 ///

21.

In response to the allegations in paragraph 6.6 of the complaint, United admits that a conversation with a person at this number took place, but states that the conversation speaks for itself and denies plaintiff's characterization of same. United denies any remaining factual allegations in this paragraph.

22.

In response to the allegations in paragraph 6.7 of the complaint, United admits that the specified number received calls in December 2018 and on January 7, 2019, but states that the content of the message speaks for itself and denies plaintiff's characterization of same. United denies any remaining allegations in this paragraph.

23.

In response to the allegations in paragraph 6.8 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

24.

In response to the allegations in paragraph 6.9 of the complaint, after reasonable investigation, United is without sufficient information to admit or deny the remaining allegations in this paragraph, and therefore denies same.

25.

In response to the allegations in paragraph 6.10 of the complaint, after reasonable investigation, United is without sufficient information to admit or deny the remaining allegations in this paragraph, and therefore denies same.

26.

In response to the allegations in paragraph 6.11 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

1 27.

2 In response to the allegations in paragraph 6.12 of the complaint, admits that it had the consent
3 of two United members to call that number. United denies the remaining allegations in this paragraph.

4 28.

5 In response to the allegations in paragraph 6.13 of the complaint, United states that the
6 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
7 response is required, United denies the allegations in this paragraph.

8 29.

9 United denies the allegations in paragraph 6.14 of the complaint.

10 30.

11 In response to the allegations in paragraph 6.15 of the complaint, United admits that it is aware
12 of the TCPA and WADAD, and the contents of those statutes speak for themselves. United denies the
13 remaining allegations in this paragraph.

14 31.

15 In response to the allegations in paragraph 6.16 of the complaint, United states that the
16 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
17 response is required, United denies the allegations in this paragraph.

18 32.

19 In response to the allegations in paragraph 6.17 of the complaint, United states that the contents
20 of the voice recordings speak for themselves. United denies any remaining allegations in this
21 paragraph.

22 33.

23 United denies the allegations in paragraph 6.18 of the complaint.

24 34.

25 United denies the allegations in paragraph 6.19 of the complaint.

26 ///

1 35.

2 In response to the allegations in paragraph 6.20 of the complaint, after reasonable investigation,
3 United is without sufficient information to respond to the allegations in this paragraph, and therefore
4 denies same.

5 36.

6 In response to the allegations in paragraph 6.21 of the complaint, United states that the
7 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
8 response is required, United denies the allegations in this paragraph.

9 37.

10 In response to the allegations in paragraph 6.22 of the complaint, United states that the
11 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
12 response is required, United denies the allegations in this paragraph.

13 **VII. CLASS ACTION ALLEGATIONS**

14 38.

15 In response to the allegations in paragraph 7.1 of the complaint, United states that the
16 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
17 response is required, United denies the allegations in this paragraph.

18 39.

19 In response to the allegations in paragraph 7.2 of the complaint, United states that the
20 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
21 response is required, United denies the allegations in this paragraph.

22 40.

23 In response to the allegations in paragraph 7.3 of the complaint, United states that the
24 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
25 response is required, United denies the allegations in this paragraph.

26 ///

1 41.

2 In response to the allegations in paragraph 7.4 of the complaint, United states that the
3 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
4 response is required, United denies the allegations in this paragraph.

5 42.

6 In response to the allegations in paragraph 7.5 of the complaint, United states that the
7 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
8 response is required, United denies the allegations in this paragraph.

9 43.

10 In response to the allegations in paragraph 7.6 of the complaint, United states that the
11 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
12 response is required, United denies the allegations in this paragraph.

13 44.

14 In response to the allegations in paragraph 7.7 of the complaint, United states that the
15 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
16 response is required, United denies the allegations in this paragraph.

17 45.

18 In response to the allegations in paragraph 7.8 of the complaint, United states that the
19 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
20 response is required, United denies the allegations in this paragraph.

21 **VIII. FIRST CLAIM FOR RELIEF**
22 **(Violations of RCW 80.36.400)**

23 46.

24 In response to the allegations in paragraph 8.1 of the complaint, United incorporates by
25 reference each and every response set forth above.

26 ///

47.

In response to the allegations in paragraph 8.2 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

48.

In response to the allegations in paragraph 8.3 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

IX. SECOND CLAIM FOR RELIEF
(Violation of Washington Consumer Protection Act, RCW 19.86 et seq.)

49.

In response to the allegations in paragraph 9.1 of the complaint, United incorporates by reference each and every response set forth above.

50.

In response to the allegations in paragraph 9.2 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

51.

In response to the allegations in paragraph 9.3 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

52

In response to the allegations in paragraph 9.4 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

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X. THIRD CLAIM FOR RELIEF
**(Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A) –
Cell Phone Class)**

53.

In response to the allegations in paragraph 10.1 of the complaint, United incorporates by reference each and every response set forth above.

54.

In response to the allegations in paragraph 10.2 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

55.

In response to the allegations in paragraph 10.3 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

56.

In response to the allegations in paragraph 10.4 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

XI. FOURTH CLAIM FOR RELIEF
(Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C.
§ 227(b)(1)(A) – Cell Phone Class)

57.

In response to the allegations in paragraph 11.1 of the complaint, United incorporates by reference each and every response set forth above.

58.

In response to the allegations in paragraph 11.2 of the complaint, United states that the allegations in this paragraph are legal conclusions to which no response is required. To the extent a response is required, United denies the allegations in this paragraph.

1 59.

2 In response to the allegations in paragraph 11.3 of the complaint, United states that the
3 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
4 response is required, United denies the allegations in this paragraph.

5 60.

6 In response to the allegations in paragraph 11.4 of the complaint, United states that the
7 allegations in this paragraph are legal conclusions to which no response is required. To the extent a
8 response is required, United denies the allegations in this paragraph.

9 **PRAYER FOR RELIEF**

10 61.

11 In response to the allegations in paragraph A of the prayer for relief, United states that plaintiff
12 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
13 class.

14 62.

15 In response to the allegations in paragraph B of the prayer for relief, United states that plaintiff
16 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
17 class.

18 63.

19 In response to the allegations in paragraph C of the prayer for relief, United states that plaintiff
20 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
21 class.

22 64.

23 In response to the allegations in paragraph D of the prayer for relief, United states that plaintiff
24 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
25 class.

26 ///

1 65.

2 In response to the allegations in paragraph E of the prayer for relief, United states that plaintiff
3 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
4 class.

5 66.

6 In response to the allegations in paragraph F of the prayer for relief, United states that plaintiff
7 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
8 class.

9 67.

10 In response to the allegations in paragraph G of the prayer for relief, United states that plaintiff
11 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
12 class.

13 68.

14 In response to the allegations in paragraph H of the prayer for relief, United states that plaintiff
15 is not entitled to relief of any kind against United, whether individually or on behalf of the putative
16 class.

17 **AFFIRMATIVE AND ADDITIONAL DEFENSES**

18 United asserts the following Affirmative Defenses, without assuming any burden that would
19 otherwise rest with plaintiff.

20 **FIRST AFFIRMATIVE DEFENSE**

21 **(Failure to State a Claim)**

22 Plaintiff's complaint and the purported causes of action set forth therein fail to state a claim
23 against United for which relief can be granted under applicable law.

24 **SECOND AFFIRMATIVE DEFENSE**

25 **(Insufficiency of Class Allegations)**

26 Plaintiff's purported class allegations are insufficient as a matter of law. United specifically

reserves the right to challenge the sufficiency of plaintiff's purported class allegations, and the proposed class treatment of this action, at the appropriate stage of this action.

THIRD AFFIRMATIVE DEFENSE (Consent)

Plaintiff's claims, and/or the claims of some or all putative class members, are barred because they consented to receiving the calls at issue in this action.

FOURTH AFFIRMATIVE DEFENSE (Waiver and/or Forfeiture)

Plaintiff's claims, and/or the claims of some or all putative class members, are barred by the doctrines of waiver and/or forfeiture.

FIFTH AFFIRMATIVE DEFENSE (Statute of Limitation)

Plaintiff's claims, and/or the claims of some or all putative class members, are barred by the applicable statute of limitation. Many putative class members' alleged claims will be time-barred under Washington law.

SIXTH AFFIRMATIVE DEFENSE (Laches)

Plaintiff's claims, and/or the claims of some or all putative class members, are barred by the doctrine of laches. Plaintiffs and/or some or all of the putative class members may have negligently and unreasonably delayed in the commencement of this lawsuit. None of the putative class members have taken any action to assert a cause of action to date. United has been prejudiced by these delays.

SEVENTH AFFIRMATIVE DEFENSE (Lack of Standing)

Plaintiff, and/or some or all of the putative class members, have no standing to sue United with respect to the claims brought in plaintiff's complaint.

III

1 **EIGHTH AFFIRMATIVE DEFENSE**
2 **(Proximate Cause)**

3 Plaintiff's claims, and/or the claims of some or all putative class members, are barred because
4 any alleged injury suffered by plaintiffs did not result from or was not proximately caused by any act
5 or omission or any wrongful conduct on the part of United.

6 **NINTH AFFIRMATIVE DEFENSE**
7 **(Lack of Intent)**

8 Plaintiff's claims, and/or the claims of some or all putative class members, are barred because
9 United at all relevant times acted in good faith and without malice, willfulness, or intent to injure or
10 harm plaintiff or the purported class in any way.

11 **TENTH AFFIRMATIVE DEFENSE**
12 **(Lack of Damages)**

13 Plaintiff's claims, and the claims of some or all putative class members, are barred by their lack
14 of damages.

15 **ELEVENTH AFFIRMATIVE DEFENSE**
16 **(Estoppel)**

17 Plaintiff's claims, and/or the claims of some or all putative class members, are barred by the
18 doctrine of estoppel.

19 **TWELFTH AFFIRMATIVE DEFENSE**
20 **(Unclean Hands/In Pari Delicto)**

21 Plaintiff's claims, and/or the claims of some or all putative class members, are barred by their
22 inequitable conduct and the doctrine of in pari delicto.

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24 ///

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THIRTEENTH AFFIRMATIVE DEFENSE (Adequate Remedy at Law)

Plaintiff's equitable claims, and/or the equitable claims of some or all putative class members, are barred because plaintiff and/or some or all of the putative class members have adequate remedies at law.

FOURTEENTH AFFIRMATIVE DEFENSE (Fault of Others)

Plaintiff's damages, and the damages of some or all putative class members, if any, are the result of actions or conduct by third parties, over which United had no control.

FIFTEENTH AFFIRMATIVE DEFENSE (Primary Jurisdiction)

Plaintiff's claims, and the claims of some or all putative class members, if any, rely on and should await pending interpretations of applicable law by the Federal Communications Commission, which has primary jurisdiction to enforce and interpret the TCPA.

SIXTEENTH AFFIRMATIVE DEFENSE (Additional Defenses)

United may have additional defenses that cannot now be articulated due to the generality of plaintiff's pleadings and the fact that discovery has not yet begun. Accordingly, United expressly reserves the right to supplement the foregoing and to plead any and all additional defenses available under the law.

WHEREFORE, having fully answered plaintiff's complaint and having asserted affirmative and additional defenses, United respectfully prays for judgment as follows:

- A. That plaintiff's claims against United be dismissed in their entirety and with prejudice;
 - B. That plaintiff and the putative class members take nothing;
 - C. That the court enter judgment in favor of United; and
 - D. For any other relief that the court deems just and proper.

DEMAND FOR JURY TRIAL

United demands a trial by jury on all issues so triable.

Dated: March 14, 2019

HOLLAND & KNIGHT LLP

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Attorneys for Defendant

1 CERTIFICATE OF SERVICE

2 I hereby certify that I caused the foregoing DEFENDANT UNITED HEALTHCARE
3 SERVICES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES to be served on the following
person[s]:

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14 by causing the document to be delivered by the following indicated method or methods:

- 15 by CM/ECF electronically mailed notice from the Court on the date set forth below.
- 16 by mailing full, true and correct copies thereof in sealed, first class postage prepaid envelopes,
17 addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of
18 the parties and/or attorneys, and deposited with the United States Postal Service at Portland, Oregon,
on the date set forth below.
- 19 by causing full, true, and correct copies thereof to be hand-delivered to the parties and/or their
20 attorneys at their last-known office addresses listed above on the date set forth below.
- 21 by sending full, true, and correct copies thereof, via overnight courier in sealed, prepaid
22 envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office
addresses of the parties and/or their attorneys, on the date set forth below.
- 23 by faxing full, true, and correct copies thereof to the fax machines which are the last-known
24 fax numbers for the parties' and/or attorneys' offices, on the date set forth below.

25 DATED March 14, 2019.

26 s/ Kristin M. Asai
Kristin M. Asai

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